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12 BURLINGTON COAT FACTORY WAREHOUSE
13 CORPORATION and BURLINGTON COAT FACTORY
14 OF CALIFORNIA, LLC

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 MAY VANG, and all others similarly
19 situated,

20 Plaintiff,

21 v.

22 BURLINGTON COAT FACTORY
23 WAREHOUSE CORPORATION, a New
24 Jersey corporation; BURLINGTON
25 COAT FACTORY OF CALIFORNIA,
26 LLC, a California limited liability
27 company; and DOES 1 through 10,
28 inclusive,

Defendants.

Case No. 09-CV-08061-CAS (JCx)

**DEFENDANTS BURLINGTON
COAT FACTORY WAREHOUSE
CORPORATION AND
BURLINGTON COAT
FACTORY OF CALIFORNIA,
LLC'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Defendants Burlington Coat Factory Warehouse Corporation (“BCF”) and Burlington Coat Factory Warehouse of California, LLC (“BCF of California”) (collectively “Defendants”) hereby answer Plaintiff’s First Amended Complaint (“Complaint”) as follows:

INTRODUCTION

1. Answering paragraph 1 of the Complaint, Defendants admit that this matter is a proposed class and collective action brought by Plaintiff and that Plaintiff purports to seek declaratory and injunctive relief, damages, restitution and penalties. Except as so admitted, Defendants deny each and every allegation of this paragraph in the Complaint.

JURISDICTION AND VENUE

2. Answering paragraph 2 of the Complaint, Defendants admit that this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1367(a) and that Plaintiff alleges a claim under the Fair Labor Standards Act and related claims under the California Labor Code and California Business and Professions Code that form part of the same case and controversy under Article III, section 2 of the U.S. Constitution. Except as so admitted, Defendants deny each and every allegation of this paragraph in the Complaint.

3. Answering paragraph 3 of the Complaint, Defendants admit that venue is proper under 28 U.S.C. § 1391. Except as so admitted, Defendants deny each and every allegation of this paragraph in the Complaint.

PARTIES AND CONDUCT

A. Plaintiff and Class Members

4. Answering paragraph 4 of the Complaint, Defendants admit that BCF of California employed Plaintiff as an Assistant Store Manager, a position that it classified as exempt; and that BCF of California previously employed Plaintiff in other positions that it classified as non-exempt. Except as so admitted, Defendants deny each and every allegation of this paragraph in the Complaint.

1 5. Answering paragraph 5 of the Complaint, Defendants admit that
2 Plaintiff purports to allege violations of the FLSA and/or the California Labor
3 Code. Except as so admitted, Defendants deny each and every allegation of this
4 paragraph in the Complaint.

5 **B. Defendants**

6 6. Answering paragraph 6 of the Complaint, Defendants admit all
7 allegations therein.

8 7. Answering paragraph 7 of the Complaint, Defendants admit all
9 allegations therein.

10 8. Answering paragraph 8 of the Complaint, Defendants admit that
11 Plaintiff purports to sue DOES 1-10. Except as so admitted, Defendants deny each
12 and every allegation of this paragraph in the Complaint. Defendants further state
13 that this paragraph contains an inappropriate reference to Doe defendants.
14 *Sigurdson v. Del Guercio*, 241 F.2d 480, 484 (9th Cir. 1956) (there is no authority
15 for the use of Doe defendants in an action under federal statute).

16 9. Answering paragraph 9 of the Complaint, Defendants deny all
17 allegations therein.

18 10. Answering paragraph 10 of the Complaint, Defendants deny all
19 allegations therein.

20 11. Answering paragraph 11 of the Complaint, Defendants deny all
21 allegations therein.

22 **CLASS ACTION ALLEGATIONS**

23 12. Answering paragraph 12 of the Complaint, Defendants incorporate
24 herein by reference their response to paragraphs 1-11 above.

25 13. Answering paragraph 13 of the Complaint, Defendants admit that
26 Plaintiff alleges that she seeks to represent the purported classes and subclasses of
27 Defendants' current, future, and/or former employees defined in paragraph 13 of
28 Plaintiff's Complaint. Except as so admitted, Defendants deny each and every

1 allegation of this paragraph in the Complaint.

2 14. Answering paragraph 14 of the Complaint, Defendants admit that
3 Plaintiff purports to bring this action as an alleged class action under Rule 23(a) of
4 the Federal Rules of Civil Procedure with respect to claims for alleged violations of
5 California law and as an alleged opt-in collective action under 29 U.S.C. § 216(b)
6 with respect to a claim for alleged violations of the FLSA. Except as so admitted,
7 Defendants deny each and every allegation of this paragraph in the Complaint.

8 15. Answering 15 of the Complaint, Defendants admit that Plaintiff
9 purports to bring this action as an alleged class action under Rule 23(b)(3) of the
10 Federal Rules of Civil Procedure and as an alleged collective action under 29
11 U.S.C. § 216(b). Except as so admitted, Defendants deny each and every allegation
12 of this paragraph in the Complaint.

13 16. Answering paragraph 16 of the Complaint, Defendants deny all
14 allegations therein.

15 17. Answering paragraph 17 of the Complaint, Defendants deny all
16 allegations therein.

17 **FIRST CLAIM FOR RELIEF**

18 18. Answering paragraph 18 of the Complaint, Defendants incorporate
19 herein by reference their response to paragraphs 1-17 above.

20 19. Answering paragraph 19, Defendants admit that Plaintiff and the
21 purported classes and subclasses work in the mercantile industry. Except as so
22 admitted, Defendants deny each and every allegation of this paragraph in the
23 Complaint.

24 20. Answering paragraph 20 of the Complaint, Defendants deny all
25 allegations therein.

26 21. Answering paragraph 21 of the Complaint, Defendants deny all
27 allegations therein.

28 22. Answering paragraph 22 of the Complaint, Defendants deny all

1 allegations therein.

2 23. Answering paragraph 23 of the Complaint, the allegations set forth in
3 this paragraph assert no factual contentions or assert only legal conclusions and,
4 therefore, Defendants deny each and every allegation therein.

5 24. Answering paragraph 24 of the Complaint, Defendants deny all
6 allegations therein.

7 25. Answering paragraph 25 of the Complaint, Defendants deny all
8 allegations therein.

9 26. Answering paragraph 26 of the Complaint, Defendants admit that
10 Plaintiff alleges that she seeks declaratory and injunctive relief, monetary damages,
11 liquidated damages, costs of suit, and reasonable attorneys' fees allegedly pursuant
12 to 29 U.S.C. § 216 on behalf of herself and the other purported members of the
13 FLSA Misclassification Class. Except as so admitted, Defendants deny each and
14 every allegation of this paragraph in the Complaint.

15 **SECOND CLAIM FOR RELIEF**

16 27. Answering paragraph 27 of the Complaint, Defendants incorporate
17 herein by reference their response to paragraphs 1-26 above.

18 28. Answering paragraph 28 of the Complaint, Defendants deny all
19 allegations therein.

20 29. Answering paragraph 29 of the Complaint, Defendants deny all
21 allegations therein.

22 30. Answering paragraph 30 of the Complaint, Defendants deny all
23 allegations therein.

24 31. Answering paragraph 31 of the Complaint, the allegations set forth in
25 this paragraph assert no factual contentions or assert only legal conclusions and,
26 therefore, Defendants deny each and every allegation therein.

27 32. Answering paragraph 32 of the Complaint, the allegations set forth in
28 this paragraph assert no factual contentions or assert only legal conclusions and,

1 therefore, Defendants deny each and every allegation therein.

2 33. Answering paragraph 33 of the Complaint, Defendants deny all
3 allegations therein.

4 34. Answering paragraph 34 of the Complaint, Defendants deny all
5 allegations therein.

6 35. Answering paragraph 35 of the Complaint, Defendants admit that
7 Plaintiff alleges that she seeks declaratory and injunctive relief, damages for unpaid
8 overtime wages, interest thereon, costs of suit, and reasonable attorney's fees
9 allegedly pursuant to California Labor Code § 1194(a) on behalf of herself and the
10 other purported members of the California Overtime Class. Except as so admitted,
11 Defendants deny each and every allegation of this paragraph in the Complaint.

12 **THIRD CLAIM FOR RELIEF**

13 36. Answering paragraph 36 of the Complaint, Defendants incorporate
14 herein by reference their response to paragraphs 1-35 above.

15 37. Answering paragraph 37 of the Complaint, the allegations set forth in
16 this paragraph assert no factual contentions or assert only legal conclusions and,
17 therefore, Defendants deny each and every allegation therein.

18 38. Answering paragraph 38 of the Complaint, Defendants deny all
19 allegations therein.

20 39. Answering paragraph 39 of the Complaint, Defendants deny all
21 allegations therein.

22 40. Answering paragraph 40 of the Complaint, Defendants deny all
23 allegations therein.

24 41. Answering paragraph 41 of the Complaint, Defendants deny all
25 allegations therein.

26 42. Answering paragraph 42 of the Complaint, Defendants admit that
27 Plaintiff alleges that she seeks declaratory and injunctive relief, damages for unpaid
28 overtime wages, interest thereon, costs of suit, and reasonable attorney's fees

1 allegedly pursuant to California Labor Code § 1194(a) on behalf of herself and the
2 other purported members of the California CTO Class. Except as so admitted,
3 Defendants deny each and every allegation of this paragraph in the Complaint.

4 **FOURTH CLAIM FOR RELIEF**

5 43. Answering paragraph 43 of the Complaint, Defendants incorporate
6 herein by reference their response to paragraphs 1-42 above.

7 44. Answering paragraph 44 of the Complaint, the allegations set forth in
8 this paragraph assert no factual contentions or assert only legal conclusions and,
9 therefore, Defendants deny each and every allegation therein.

10 45. Answering paragraph 45 of the Complaint, Defendants deny all
11 allegations therein.

12 46. Answering paragraph 46 of the Complaint, Defendants deny all
13 allegations therein.

14 47. Answering paragraph 47 of the Complaint, Defendants deny all
15 allegations therein.

16 48. Answering paragraph 48 of the Complaint, Defendants admit that
17 Plaintiff alleges that she seeks declaratory and injunctive relief, damages for unpaid
18 wages owed, interest thereon, costs of suit allegedly pursuant to California Labor
19 Code § 218.6, and reasonable attorney's fees allegedly pursuant to California Code
20 of Civil Procedure § 1021.5. Except as so admitted, Defendants deny each and
21 every allegation of this paragraph in the Complaint.

22 **FIFTH CLAIM FOR RELIEF**

23 49. Answering paragraph 49 of the Complaint, Defendants incorporate
24 herein by reference their response to paragraphs 1-48 above.

25 50. Answering paragraph 50 of the Complaint, Defendants deny all
26 allegations therein.

27 51. Answering paragraph 51 of the Complaint, Defendants deny all
28 allegations therein.

1 52. Answering paragraph 52 of the Complaint, Defendants deny all
2 allegations therein.

3 53. Answering paragraph 53 of the Complaint, Defendants deny all
4 allegations therein.

5 54. Answering paragraph 54 of the Complaint, Defendants deny all
6 allegations therein.

7 55. Answering paragraph 55 of the Complaint, Defendants deny all
8 allegations therein.

9 56. Answering paragraph 56 of the Complaint, Defendants deny all
10 allegations therein.

11 57. Answering paragraph 57 of the Complaint, Defendants deny all
12 allegations therein.

13 58. Answering paragraph 58 of the Complaint, Defendants deny all
14 allegations therein.

15 59. Answering paragraph 59 of the Complaint, Defendants admit that
16 Plaintiff alleges that she seeks declaratory and injunctive relief, damages for unpaid
17 wages owed, interest thereon, costs of suit allegedly pursuant to California Labor
18 Code § 218.6, and reasonable attorney's fees allegedly pursuant to California Code
19 of Civil Procedure § 1021.5 on behalf of herself and the other purported members
20 of the California Rest Period Class and the California Meal Period Class. Except as
21 so admitted, Defendants deny each and every allegation of this paragraph in the
22 Complaint.

23 **SIXTH CLAIM FOR RELIEF**

24 60. Answering paragraph 60 of the Complaint, Defendants incorporate
25 herein by reference their response to paragraphs 1-59 above.

26 61. Answering paragraph 61 of the Complaint, the allegations set forth in
27 this paragraph assert no factual contentions or assert only legal conclusions and,
28 therefore, Defendants deny each and every allegation therein.

1 62. Answering paragraph 62 of the Complaint, Defendants deny all
2 allegations therein.

3 63. Answering paragraph 63 of the Complaint, Defendants deny all
4 allegations therein.

5 64. Answering paragraph 64 of the Complaint, Defendants admit that
6 Plaintiff alleges that she seeks declaratory and injunctive relief, damages for unpaid
7 wages owed, interest thereon, costs of suit allegedly pursuant to California Labor
8 Code § 218.6, and reasonable attorney's fees allegedly pursuant to California Code
9 of Civil Procedure § 1021.5 on behalf of herself and the other purported members
10 of the California All-Inclusive Class. Except as so admitted, Defendants deny each
11 and every allegation of this paragraph in the Complaint.

12 **SEVENTH CLAIM FOR RELIEF**

13 65. Answering paragraph 65 of the Complaint, Defendants incorporate
14 herein by reference their response to paragraphs 1-64 above.

15 66. Answering paragraph 66 of the Complaint, Defendants deny all
16 allegations therein.

17 67. Answering paragraph 67 of the Complaint, Defendants deny all
18 allegations therein.

19 68. Answering paragraph 68 of the Complaint, Defendants deny all
20 allegations therein.

21 69. Answering paragraph 69 of the Complaint, Defendants deny all
22 allegations therein.

23 70. Answering paragraph 70 of the Complaint, Defendants deny all
24 allegations therein.

25 71. Answering paragraph 71 of the Complaint, Defendants deny all
26 allegations therein.

27 **EIGHTH CLAIM FOR RELIEF**

28 72. Answering paragraph 72 of the Complaint, Defendants incorporate

1 herein by reference their response to paragraphs 1-71 above.

2 73. Answering paragraph 73 of the Complaint, Defendants deny all
3 allegations therein.

4 74. Answering paragraph 74 of the Complaint, Defendants deny all
5 allegations therein.

6 75. Answering paragraph 75 of the Complaint, Defendants deny all
7 allegations therein.

8 76. Answering paragraph 76 of the Complaint, Defendants deny all
9 allegations therein.

10 77. Answering paragraph 77 of the Complaint, Defendants admit that
11 Plaintiff alleges that she seeks declaratory and injunctive relief and restitution,
12 allegedly pursuant to California Business & Professions Code § 17203, on behalf of
13 herself and the other purported members of the California All-Inclusive Class.
14 Except as so admitted, Defendants deny each and every allegation of this paragraph
15 in the Complaint.

16 78. Answering paragraph 78 of the Complaint, Defendants admit that
17 Plaintiff alleges that she seeks attorney's fees allegedly pursuant to California Code
18 of Civil Procedure § 1021.5, the substantial benefit doctrine an/or the common fund
19 doctrine, on behalf of herself and the other purported members of the California
20 All-Inclusive Class. Except as so admitted, Defendants deny each and every
21 allegation of this paragraph in the Complaint.

22 **NINTH CLAIM FOR RELIEF**

23 79. Answering paragraph 79 of the Complaint, Defendants incorporate
24 herein by reference their response to paragraphs 1-78 above.

25 80. Answering paragraph 80 of the Complaint, Defendants deny all
26 allegations therein.

27 81. Answering paragraph 81 of the Complaint, the allegations set forth in
28 this paragraph assert no factual contentions or assert only legal conclusions and,

1 therefore, Defendants deny each and every allegation therein.

2 82. Answering paragraph 82 of the Complaint, Defendants deny all
3 allegations therein.

4 83. Answering paragraph 83 of the Complaint, Defendants admit that
5 Plaintiff gave written notice by certified mail to the Labor and Workforce
6 Development Agency ("LWDA") and Defendants of the specific provisions of the
7 Labor Code alleged to have been violated and that, by letter, the LWDA provided
8 Plaintiff with written notice that it does not intend to investigate the violations of
9 the California Labor Code alleged herein. Except as so admitted, Defendants deny
10 each and every allegation of this paragraph in the Complaint.

11 84. Answering paragraph 84 of the Complaint, Defendants admit that
12 Plaintiff alleges that she seeks reasonable attorney's fees and costs allegedly
13 pursuant to California Labor Code § 2699(g), on behalf of herself and the other
14 purported members of the California Civil Penalties Class. Except as so admitted,
15 Defendants deny each and every allegation of this paragraph in the Complaint.

16 **AFFIRMATIVE DEFENSES**

17 Defendants assert the following affirmative defenses to the Complaint:

18 **FIRST DEFENSE**

19 **(Failure to State a Claim)**

20 1. As a separate defense to the Complaint, Defendants allege that the
21 Complaint fails to state a claim upon which relief may be granted.

22 **SECOND DEFENSE**

23 **(Laches)**

24 2. As a separate defense to the Complaint, Defendants allege that some or
25 all of the claims asserted in the Complaint are barred by the equitable doctrine of
26 laches and/or acquiescence.

27 **THIRD DEFENSE**

28 **(Waiver)**

1 3. As a separate defense to the Complaint, Defendants allege that some or
2 all of the claims asserted in the Complaint are barred by the equitable doctrine of
3 waiver.

4 **FOURTH DEFENSE**

5 **(Estoppel)**

6 4. As a separate defense to the Complaint, Defendants allege that some or
7 all of the claims asserted in the Complaint are barred by the equitable doctrine of
8 estoppel.

9 **FIFTH DEFENSE**

10 **(Unclean Hands and/or After-Acquired Evidence)**

11 5. As a separate defense to the Complaint, Defendants allege that some or
12 all of the claims asserted in the Complaint may be barred by the equitable doctrine
13 of unclean hands and/or after-acquired evidence, or in the alternative these
14 doctrines cut off or reduce Plaintiff's and/or the purported classes' damages.

15 **SIXTH DEFENSE**

16 **(Statute of Limitations)**

17 6. As a separate defense to the Complaint, Defendants allege that the
18 Complaint, and each purported claim contained therein, may be barred by the
19 applicable statutes of limitation.

20 **SEVENTH DEFENSE**

21 **(Failure To Mitigate)**

22 7. As a separate defense to the Complaint, Defendants allege that
23 Plaintiff and the alleged classes of persons whom Plaintiff purports to represent
24 have failed to mitigate their damages, if any.

25 **EIGHTH DEFENSE**

26 **(Proximate Cause of Damages)**

27 8. As a separate defense to the Complaint, Defendants allege that, should
28 it be determined that Plaintiff and/or the purported classes have been damaged, then

1 said damages were proximately caused by their own conduct.

2 **NINTH DEFENSE**

3 **(Requirements for Class, Group or Collective Action)**

4 9. As a separate defense to the Complaint, Defendants allege that
5 Plaintiff cannot satisfy the requirements for a class, group, collective or
6 representative action under federal or California law.

7 **TENTH DEFENSE**

8 **(Lack of Standing)**

9 10. As a separate defense to the Complaint, Defendants allege that the
10 Complaint is barred to the extent that Plaintiff lacks standing to raise some or all of
11 the claims of the alleged classes of persons whom Plaintiff purports to represent.

12 **ELEVENTH DEFENSE**

13 **(Exemption)**

14 11. As a separate defense to the Complaint, Defendants allege that the
15 Complaint is barred because Plaintiff and some of the alleged classes of persons
16 which Plaintiff purports to represent are properly classified as exempt executive
17 and/or administrative employees from the overtime requirements of federal and/or
18 California law.

19 **TWELFTH DEFENSE**

20 **(Compromise, Settlement, Waiver, Accord, Satisfaction, Set-Off, Release)**

21 12. As a separate defense to the Complaint, Defendants allege that
22 Plaintiff and/or members of the alleged classes of persons which Plaintiff purports
23 to represent are precluded from recovering any amounts from Defendants because
24 Defendants have paid Plaintiff and/or members of the alleged classes of persons
25 which Plaintiff purport to represent, all sums legally due under California and/or
26 federal law, as applicable, and/or Plaintiff and/or any member of the alleged classes
27 which Plaintiff purports to represent has executed a compromise and release of any
28 claims asserted in this lawsuit and, accordingly, such claims are barred by the

1 doctrines of compromise, settlement, waiver, accord, satisfaction, set off, and/or
2 release.

3 **THIRTEENTH DEFENSE**

4 **(Failure To Perform Duties)**

5 13. As a separate defense to the Complaint, Defendants allege that the
6 Complaint, and each purported cause of action contained therein, is barred to the
7 extent that Plaintiff and the alleged classes of persons which Plaintiff purports to
8 represent, failed to perform their respective duties, failed to perform those duties
9 which Defendants realistically expected each to perform, failed to use ordinary care
10 and diligence in the performance of their duties, failed to substantially comply with
11 the reasonable directions of their alleged employer, failed to exercise a reasonable
12 degree of skill in performing their job duties and/or have failed to comply with
13 California Labor Code sections 2854, 2856, 2858 and 2859, respectively.

14 **FOURTEENTH DEFENSE**

15 **(Good Faith)**

16 14. As a separate defense to the Complaint, Defendants affirmatively
17 plead that any act(s) and/or omissions(s) which may be found to be in violation of
18 the rights afforded by California and/or federal law were not willful but occurred in
19 good faith with reasonable grounds for believing that it was in full compliance with
20 California and/or federal law, as applicable.

21 **FIFTEENTH DEFENSE**

22 **(Failure to State a Claim Regarding Damages, Costs and Fees)**

23 15. As a separate defense to the Complaint, Defendants allege that the
24 Complaint fails to state a claim for which relief may be granted that provides for
25 compensatory, consequential or liquidated damages, or any other damages, costs or
26 fees allowed by California and/or federal law, as applicable.

27 **SIXTEENTH DEFENSE**

28 **(Offset)**

16. As a separate defense to the Complaint and to each claim therein, Defendants allege that if any damages have been sustained by Plaintiff or by any member of the alleged classes of persons which Plaintiff purports to represent, although such is not admitted and is specifically denied, Defendants are entitled by equity to offset all time Defendants voluntarily paid for not worked by Plaintiff and putative class members against any judgment that may be entered against Defendants.

SEVENTEENTH DEFENSE

(Vague)

17. As a separate defense to the Complaint, Defendants alleges that California Business and Professions Code Section 17200 is unconstitutionally vague as applied here in violation of Defendants' rights of due process and equal protection under the United States Constitution and the California Constitution.

EIGHTEENTH DEFENSE

(Unconstitutional)

18. As a separate defense to the Complaint, adjudication of Plaintiff's claims on a class wide basis would violate Defendants' right to due process and a jury trial and is barred by the Rules Enabling Act.

NINETEENTH DEFENSE

(Res Judicata and/or Collateral Estoppel)

19. As a separate defense to the Complaint, Defendants allege that Plaintiff's and/or the alleged classes' claims are barred by the doctrine of res judicata and/or collateral estoppel.

TWENTIETH DEFENSE

(Adequate Remedy)

20. As a separate defense to the Complaint, Defendants allege that Plaintiff's and/or the alleged classes' claims for equitable relief are barred because Plaintiff and/or the alleged class members have an adequate remedy at law for their

1 claims.

2 **TWENTY-FIRST DEFENSE**

3 **(Exhaustion)**

4 21. As a separate defense to the Complaint and all claims for damages or
5 penalties under the California Labor Code Private Attorney General Act,
6 administrative remedies may not have been exhausted.

7 **TWENTY-SECOND DEFENSE**

8 **(Negligence)**

9 22. As a separate defense to the Complaint, to the extent any damages
10 were sustained by Plaintiff and/or the alleged classes of persons which Plaintiff
11 purports to represent, which is expressly denied by Defendants, such damages were
12 either wholly or in part caused by Plaintiff's and/or the alleged classes' own action,
13 inactions, or delay in acting.

14 **TWENTY-THIRD DEFENSE**

15 **(Wages Subject to Dispute)**

16 23. As a separate defense to the Complaint, Plaintiff's and some of the
17 proposed class members' claims are subject to disputes over wages.

18 **TWENTY-FOURTH DEFENSE**

19 **(Not Unjustly Enriched)**

20 24. As a separate defense to the Complaint, Defendants were not unjustly
21 enriched.

22 **TWENTY-FIFTH DEFENSE**

23 **(Insufficient Facts for Injunctive or Equitable Relief)**

24 25. As a separate defense to the Complaint, Defendants allege that the
25 Complaint fails to allege facts sufficient to justify injunctive or other equitable
26 relief.

27 **TWENTY-SIXTH DEFENSE**

28 **(Non-Compensable Time Under Portal-to-Portal Act)**

1 26. As a separate defense to the Complaint, some or all of the disputed
2 time is not compensable pursuant to the Portal-to-Portal Act of 1947.

3 **TWENTY-SEVENTH DEFENSE**

4 **(Timely Demand for Wages Payable)**

5 27. As a separate defense to the Complaint, Plaintiff and/or the proposed
6 classes have failed to timely make a demand in writing for wages due and payable.

7 **TWENTY-EIGHTH DEFENSE**

8 **(No Liquidated Damages)**

9 28. As a separate defense to the Complaint, Plaintiff and/or the proposed
10 classes may not recover liquidated damages because (1) Defendants acted at all
11 times in good faith and did not commit any willful violation of the Fair Labor
12 Standards Act or any California laws; (2) Defendants did not authorize or ratify any
13 such allegedly willful violation; and (3) Plaintiff has failed to state facts sufficient
14 to support an award of such alleged damages against Defendants.

15 **TWENTY-NINTH DEFENSE**

16 **(No Recovery of Amounts Due and Paid)**

17 29. As a separate defense to the Complaint, Plaintiff and/or the proposed
18 classes are precluded from recovering any amounts from Defendants where
19 Defendants have paid all sums legally due under the Fair Labor Standards Act
20 and/or California law.

21 **THIRTIETH DEFENSE**

22 **(Consent to Pay System)**

23 30. As a separate defense to the Complaint, the claims of Plaintiff and/or
24 the proposed classes are barred in whole or in part because Plaintiff and/or the
25 proposed classes consented to the pay system that is the subject of the Complaint.

26 **THIRTY-FIRST DEFENSE**

27 **(Defendants Not Agents, Employees and/or Servants, Masters**
28 **or Employers of Each Other)**

